

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

SHERRI GOODE,

Plaintiff,

-against-

MIDLAND FUNDING, LLC, MIDLAND CREDIT MANAGEMENT, INC., and
ENCORE CAPITAL GROUP, INC.,

Defendants.

COMPLAINT

PLAINTIFF DEMANDS
TRIAL BY JURY

AZRACK, M.J.

COMPLAINT

SHERRI GOODE ("Plaintiff"), by and through her attorneys, KIMMEL & SILVERMAN, P.C., alleges the following against MIDLAND FUNDING, LLC ("Defendant Midland"), MIDLAND CREDIT MANAGEMENT, INC ("Defendant MCM"); and ENCORE CAPITAL GROUP, INC. ("Defendant Encore") (collectively referred to as "Defendants"):

INTRODUCTION

1. This is an action for damages brought by an individual consumer for Defendants' violations of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, *et seq.* ("FDCPA"), which prohibits debt collectors from engaging in abusive, deceptive, and unfair practices.

JURISDICTION AND VENUE

2. Jurisdiction of this Court arises under 15 U.S.C. § 1692k(d), which states that such actions may be brought and heard before "any appropriate United States district court

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CASE NO.:

2014 DEC -2 AM 10:38

FILED
CLERK

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Case No. 14-cv-06997

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COMPLAINT

JOSEPH P. MORAN, JR.
Plaintiff

vs.
JAMES M. MORAN, JR.
Defendant

Case No. 14-cv-06997

JOSEPH P. MORAN, JR.

Plaintiff

1. Plaintiff Joseph P. Moran, Jr. ("Joe") is a resident of the State of New York. Defendant James M. Moran, Jr. ("Jim") is a resident of the State of New York. Plaintiff and Defendant are brothers. Plaintiff and Defendant are both members of the Moran family. Plaintiff and Defendant are both members of the Moran family. Plaintiff and Defendant are both members of the Moran family.

JOSEPH P. MORAN, JR.

2. Plaintiff and Defendant are both members of the Moran family. Plaintiff and Defendant are both members of the Moran family. Plaintiff and Defendant are both members of the Moran family. Plaintiff and Defendant are both members of the Moran family. Plaintiff and Defendant are both members of the Moran family.

JOSEPH P. MORAN, JR.

3. Plaintiff and Defendant are both members of the Moran family. Plaintiff and Defendant are both members of the Moran family. Plaintiff and Defendant are both members of the Moran family. Plaintiff and Defendant are both members of the Moran family. Plaintiff and Defendant are both members of the Moran family.

1 without regard to the amount in controversy,” and 28 U.S.C. § 1331, which grants this court
2 original jurisdiction of all civil actions arising under the laws of the United States.

3 3. Defendants regularly conduct business in the State of New York therefore
4 personal jurisdiction is established.

5 4. Venue is proper pursuant to 28 U.S.C. § 1391(b)(2).
6

7 **PARTIES**

8 5. Plaintiff is a natural persons residing in Shirley, New York 11967.

9 6. Plaintiff is a “consumer(s)” as that term is defined by 15 U.S.C. § 1692a(3).
10

11 7. Defendant Midland is a corporation specializing in debt collection with its
12 principal place of business located at 8875 Aero Drive, San Diego, California, 92123.

13 8. Defendant MCM is a corporation specializing in debt collection with its
14 principal place of business located at 8875 Aero Drive, San Diego, California, 92123.

15 9. Defendant Encore is a corporation specializing in debt collection with its
16 principal place of business located at 8875 Aero Drive, San Diego, California, 92123.

17 10. At all times material hereto, Defendants acted as “debt collector[s]” within the
18 meaning of 15 U.S.C. § 1692(a)(6), and attempted to collect a “debt” as defined by 15 U.S.C. §
19 1692(a)(5).

20 11. Defendants acted through their agents, employees, officers, members, directors,
21 heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives, and insurers.
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23
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FACTUAL ALLEGATIONS

12. At all times material hereto, Defendants contacted Plaintiff in an attempt to collect a consumer debt allegedly owed by an individual named Anthony Miles.

13. The alleged debt arose out of transactions that were for personal, family, or household purposes, as Plaintiff does not have any business debts.

14. Beginning in or around August 2014, Defendant's collectors placed repeated harassing calls to Plaintiff's home telephone number in its attempt to collect the alleged debt.

15. Defendants' calls originated from telephone numbers including, but not limited to, (866) 580-4780. The undersigned has confirmed that this number belongs to Defendants.

16. Defendants' collector's, including an individual going by the name James Cyrus, called Plaintiff, on average, two times on a given a day.

17. At all relevant times, Plaintiff advised Defendants that she was not who they were looking for, and that no one by the name of Anthony Miles could be reached at her telephone number.

18. Accordingly, Plaintiff demanded that Defendants stop calling her.

19. Despite being advised by Plaintiff that the consumer they were looking for could not be reached at her telephone number and that she did not want to be called, Defendants calls persisted.

20. Once Defendants were aware that Anthony Miles could not be reached at Plaintiff's telephone number and that Plaintiff did not wish to be called, there was no reason for additional calls to Plaintiff, other than for the purposes of harassment.

21. Defendant's actions, as described herein, were taken with the intent of harassing, abusing, and coercing payment from Plaintiff for a debt owed by an unknown third party.

COUNT I
DEFENDANTS VIOLATED § 1692d OF THE FDCPA

22. A debt collector violates § 1692d by engaging in any conduct the natural consequence of which is to harass, oppress, or abuse any person in connection with the collection of a debt.

23. Defendants violated § 1692d when they placed repeated and continuous harassing telephone calls to Plaintiff's home telephone; when they continued to call Plaintiff after they were aware that the debtor they sought to collect from could not be reached on Plaintiff's telephone; and, when they continued to call Plaintiff after it was aware that Plaintiff did not wish to be contacted.

COUNT II
DEFENDANTS VIOLATED § 1692d(5) OF THE FDCPA

24. A debt collector violates § 1692d(5) by causing a telephone to ring or engaging any person in telephone conversation repeatedly or continuously with intent to annoy, abuse, or harass any person at the called number.

25. Defendants violated § 1692d(5) when they placed repeated and continuous harassing telephone calls to Plaintiff's home telephone causing it to ring continuously with the intent to annoy, abuse, or harass Plaintiff.

COUNT III
DEFENDANTS VIOLATED § 1692f OF THE FDCPA

26. A debt collector violates § 1692f by using unfair or unconscionable means to collect or attempt to collect any debt.

27. Defendants violated § 1692f when they failed to update their internal records to remove Plaintiff's telephone number from its call lists; when they repeatedly harassed Plaintiff; and, generally, when they used unfair and unconscionable means to collect the alleged debt.

WHEREFORE, Plaintiff, SHERRI GOODE, respectfully prays for judgment as follows:


- a. All actual damages suffered pursuant to 15 U.S.C. § 1692k(a)(1);
- b. Statutory damages of \$1,000.00 for the violation of the FDCPA pursuant to 15 U.S.C. § 1692k(a)(2)(A);
- c. All reasonable attorneys' fees, witness fees, court costs and other litigation costs, pursuant to 15 U.S.C. § 1693k(a)(3);
- e. Any other relief deemed fair and proper by this Honorable Court.

DEMAND FOR JURY TRIAL

PLEASE TAKE NOTICE that Plaintiff, SHERRI GOODE, demands a jury trial in this case.

RESPECTFULLY SUBMITTED,

Dated: November 26, 2014

By: 
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